

SENATE BILL NO. 231

INTRODUCED BY R. LAIBLE

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A GOVERNMENTAL ENTITY TO PREPARE A SERVICE AREA REPORT TO DOCUMENT THE CALCULATION OF IMPACT FEES; ~~AND~~ AMENDING SECTIONS 7-6-1602, AND 7-6-1603, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-6-1602, MCA, is amended to read:

"7-6-1602. Calculation of impact fees -- documentation required -- ordinance or resolution -- requirements for impact fees. (1) For each public facility for which an impact fee is imposed, the governmental entity shall prepare and approve a service area report.

(2) The service area report is a written analysis that must ~~documentation that:~~

- (a) ~~describes~~ describe existing conditions of the facility;
- (b) ~~establishes level-of-service~~ establish level-of-service standards;
- (c) ~~forecasts~~ forecast future additional needs for service for a defined period of time;
- (d) ~~identifies~~ identify capital improvements necessary to meet future needs for service;
- (e) ~~identifies~~ identify those capital improvements needed for continued operation and maintenance of the facility;
- (f) ~~makes~~ make a determination as to whether one service area or more than one service area is necessary to establish a correlation between impact fees and benefits;
- (g) ~~makes~~ make a determination as to whether one service area or more than one service area for transportation facilities is needed to establish a correlation between impact fees and benefits;
- (h) ~~establishes~~ establish the methodology and time period over which the governmental entity will assign the proportionate share of capital costs for expansion of the facility to provide service to new development within each service area;
- (i) ~~establishes~~ establish the methodology that the governmental entity will use to exclude operations and maintenance costs and correction of existing deficiencies from the impact fee;
- (j) ~~establishes~~ establish the amount of the impact fee that will be imposed for each unit of increased

1 service demand; and

2 (k) ~~has~~ have a component of the budget of the governmental entity that:

3 (i) schedules construction of public facility capital improvements to serve projected growth;

4 (ii) projects costs of the capital improvements;

5 (iii) allocates collected impact fees for construction of the capital improvements; and

6 (iv) covers at least a 5-year period and is reviewed and updated at least every 2 years.

7 (3) The service area report is a written analysis that must contain documentation of sources and
8 methodology used for purposes of subsection (2) and must document how each impact fee meets the
9 requirements of subsection (7).

10 ~~(2)(4)~~ The data sources and methodology service area report supporting that supports adoption and
11 calculation of an impact fee must be available to the public upon request.

12 ~~(3)(5)~~ The amount of each impact fee imposed must be based upon the actual cost of public facility
13 expansion or improvements or reasonable estimates of the cost to be incurred by the governmental entity as a
14 result of new development. The calculation of each impact fee must be in accordance with generally accepted
15 accounting principles.

16 ~~(4)(6)~~ The ordinance or resolution adopting the impact fee must include a time schedule for periodically
17 updating the documentation required under subsection (4) (2).

18 ~~(5)(7)~~ An impact fee must meet the following requirements:

19 (a) The amount of the impact fee must be reasonably related to and reasonably attributable to the
20 development's share of the cost of infrastructure improvements made necessary by the new development.

21 (b) The impact fees imposed may not exceed a proportionate share of the costs incurred or to be
22 incurred by the governmental entity in accommodating the development. The following factors must be
23 considered in determining a proportionate share of public facilities capital improvements costs:

24 (i) the need for public facilities capital improvements required to serve new development; and

25 (ii) consideration of payments for system improvements reasonably anticipated to be made by or as a
26 result of the development in the form of user fees, debt service payments, taxes, and other available sources of
27 funding the system improvements.

28 (c) Costs for correction of existing deficiencies in a public facility may not be included in the impact fee.

29 (d) New development may not be held to a higher level of service than existing users unless there is a
30 mechanism in place for the existing users to make improvements to the existing system to match the higher level

1 of service.

2 (e) Impact fees may not include expenses for operations and maintenance of the facility."

3
4 **Section 2.** Section 7-6-1603, MCA, is amended to read:

5 **"7-6-1603. Collection and expenditure of impact fees -- refunds or credits -- mechanism for appeal**
6 **required.** (1) The collection and expenditure of impact fees must comply with this part. The collection and
7 expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the
8 impact fees. The ordinance or resolution adopted by the governmental entity must include the following
9 requirements:

10 (a) Upon collection, impact fees must be deposited in a special proprietary fund, which must be invested
11 with all interest accruing to the fund.

12 (b) A governmental entity may impose impact fees on behalf of local districts.

13 (c) If the impact fees are not collected or spent in accordance with the impact fee ordinance or resolution
14 or in accordance with 7-6-1602, any impact fees that were collected must be refunded to the person who owned
15 the property at the time that the refund was due.

16 (2) All impact fees imposed pursuant to the authority granted in this part must be paid no earlier than the
17 date of issuance of a building permit if a building permit is required for the development or no earlier than the time
18 of wastewater or water service connection or well or septic permitting.

19 (3) A governmental entity may recoup costs of excess capacity in existing capital facilities, when the
20 excess capacity has been provided in anticipation of the needs of new development, by requiring impact fees for
21 that portion of the facilities constructed for future users. The need to recoup costs for excess capacity must have
22 been documented pursuant to 7-6-1602 in a manner that demonstrates the need for the excess capacity. This
23 part does not prevent a governmental entity from continuing to assess an impact fee that recoups costs for
24 excess capacity in an existing facility. The impact fees imposed to recoup the costs to provide the excess capacity
25 must be based on the governmental entity's actual cost of acquiring, constructing, or upgrading the facility and
26 must be no more than a proportionate share of the costs to provide the excess capacity.

27 (4) Governmental entities may accept the dedication of land or the construction of public facilities in lieu
28 of payment of impact fees if:

29 (a) the need for the dedication or construction is clearly documented pursuant to 7-6-1602;

30 (b) the land proposed for dedication for the public facilities to be constructed is determined to be

1 appropriate for the proposed use by the governmental entity;

2 (c) formulas or procedures for determining the worth of proposed dedications or constructions are
3 established as part of the impact fee ordinance or resolution; and

4 (d) a means to establish credits against future impact fee revenue has been created as part of the
5 adopting ordinance or resolution if the dedication of land or construction of public facilities is of worth in excess
6 of the impact fee due from an individual development.

7 (5) Impact fees may not be imposed for remodeling, rehabilitation, or other improvements to an existing
8 structure or for rebuilding a damaged structure unless there is an increase in units that increase service demand
9 as described in ~~7-6-1602(1)(i)~~ 7-6-1602(2)(j). If impact fees are imposed for remodeling, rehabilitation, or other
10 improvements to an existing structure or use, only the net increase between the old and new demand may be
11 imposed.

12 (6) This part does not prevent a governmental entity from granting refunds or credits:

13 (a) that it considers appropriate and that are consistent with the provisions of 7-6-1602 and this chapter;

14 or

15 (b) in accordance with a voluntary agreement, consistent with the provisions of 7-6-1602 and this
16 chapter, between the governmental entity and the individual or entity being assessed the impact fees.

17 (7) An impact fee represents a fee for service payable by all users creating additional demand on the
18 facility.

19 (8) An impact fee ordinance or resolution must include a mechanism whereby a person charged an
20 impact fee may appeal the charge if the person believes an error has been made."

21
22 **NEW SECTION. SECTION 3. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2009.**

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